

KATHLEEN DONOHUE, :

PETITIONER, :

V. :

STATE-OPERATED SCHOOL DISTRICT OF : COMMISSIONER OF EDUCATION
THE CITY OF PATERSON, PASSAIC COUNTY, :

RESPONDENT, : DECISION

AND :

KATHLEEN DONOHUE, :

PETITIONER, :

V. :

STATE-OPERATED SCHOOL DISTRICT OF :
THE CITY OF PATERSON, PASSAIC COUNTY. :

RESPONDENT. :

SYNOPSIS

Petitioner – a former Paterson school teacher who retired on September 1, 2015, after teaching for approximately 28 years – filed multiple petitions with the New Jersey Department of Education, Bureau of Controversies and Disputes, beginning in April of 2016. The allegations in all of the petitions relate to events that occurred during Ms. Donahue’s prior service as a teacher in the Paterson school district, and involve charges of nepotism and favoritism by district administrators, as well as various wrongs she claims to have been subjected to – including being denied use of sick days. The respondent school district filed a motion to dismiss, contending that the petitions were late filed pursuant to *N.J.A.C.* 6A:3-1.3(i).

The ALJ found, *inter alia*, that: many of the allegations – which petitioner stated were motivated by her belief that Paterson school children have not received the thorough and efficient education they deserve because resources have been squandered by the administration, and because of inadequate supervision of the performance of teaching staff – assert the rights of third parties rather than those of petitioner herself; petitioner does not have standing to bring allegations that only assert the rights of others and not wrongs allegedly visited upon her; further, those allegations that do relate directly to wrongs against petitioner occurred during her employment in the school district, which ended September 1, 2015; the earliest petition of the several filed by Ms. Donahue was not filed until April 29, 2016. The ALJ concluded that all of the petitions were untimely and must be dismissed for failure to comply with *N.J.A.C.* 6A:3-1.3(i).

Upon review, the Commissioner concurred with the findings and conclusions of the ALJ. Accordingly, the Initial Decision was adopted as the final decision in this matter and the petition was dismissed.

This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

May 18, 2017

OAL DKT. NOS. EDU 08806-16 and EDU 09476-16 (consolidated)

AGENCY DKT. NOS. 123-4/16 and 150-5/16

KATHLEEN DONOHUE,	:	
	:	
PETITIONER,	:	
	:	
V.	:	
	:	
STATE-OPERATED SCHOOL DISTRICT OF	:	COMMISSIONER OF EDUCATION
THE CITY OF PATERSON, PASSAIC COUNTY,	:	
	:	DECISION
RESPONDENT,	:	
	:	
AND	:	
	:	
KATHLEEN DONOHUE,	:	
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V.	:	
	:	
STATE-OPERATED SCHOOL DISTRICT OF	:	
THE CITY OF PATERSON, PASSAIC COUNTY. :	:	
	:	
RESPONDENT.	:	

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, along with petitioners’ exceptions – filed pursuant to *N.J.A.C. 1:1-18.4* – and the District’s reply thereto.

In her exceptions, petitioner expresses dissatisfaction with the Administrative Law Judge’s (ALJ) Initial Decision. Petitioner argues that this matter is not out of time because many of her allegations continued after her employment with the District and are still ongoing. Petitioner also argues that she has standing because she was a teacher in the District, but could not bring her claims while working out of fear of retaliation.

In reply, the District argues that petitioner's exceptions simply air her grievances, rather than taking exception to specific findings of fact or conclusions of law. The District argues that the ALJ's decision is well reasoned and urges the Commissioner to affirm the Initial Decision.

Upon review, the Commissioner does not find petitioner's exceptions to be persuasive. The Commissioner concurs with the ALJ that petitioner does not have standing to bring allegations that only assert the rights of others. The Commissioner further agrees with the ALJ that any allegations of wrongdoing by the District aimed at the petitioner are out of time – as petitioner retired on September 1, 2015, and the first petition was not filed until April 2016. As such, the matter is appropriately dismissed because it was filed outside the 90-day limitation period set forth in *N.J.A.C. 6A:3-1.3(i)*.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter – for the reasons thoroughly expressed therein – and the petition is hereby dismissed.

IT IS SO ORDERED.*

ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 18, 2017

Date of Mailing: May 18, 2017

* This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36 (N.J.S.A 18A:6-9.1)*.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

(CONSOLIDATED)

OAL DKT. NO. EDU 08806-16

AGENCY REF. NO. 123-4/16

AND

OAL DKT. NO. EDU 09476-16

AGENCY REF. NO. 150-5/16

KATHLEEN DONOHUE,

Petitioner,

v.

STATE-OPERATED SCHOOL DISTRICT

OF THE CITY OF PATERSON,

PASSAIC COUNTY,

Respondent.

Kathleen Donohue, petitioner, pro se

Robert Murray, Esq., for respondent

Record Closed: March 3, 2017

Decided: April 6, 2017

BEFORE **JOHN P. SCOLLO**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner, Kathleen Donohue (Donohue or Petitioner), is a former Paterson school teacher who retired on September 1, 2015. Donohue filed four Petitions in the

form of letters with the Department of Education, Bureau of Controversies and Disputes. The first Petition, containing ten allegations, is dated April 21, 2016, and was filed on April 29, 2016. The second Petition, containing two allegations, is dated April 26, 2016, and was filed on April 29, 2016. The third Petition, containing twenty-four allegations, is dated May 16, 2016, (with a notarized signature dated May 13, 2016) and was filed on May 23, 2016. The fourth Petition, containing two allegations, is dated May 16, 2016, and was filed on May 23, 2016. Many of the allegations are repetitive.

Subsequently, on August 27, 2016, Donohue filed an Amended Complaint (i.e., Amended Petition) with the Office of Administrative Law alleging various forms of mismanagement at Paterson Public School Number 25 and seeking relief on behalf of students and the general public, and alleging wrongs perpetrated against her.

The Amended Petition of August 27, 2016, follows the format of the four previously filed Petitions and even reiterates the allegations according to the dates of her previously filed Petitions, as set forth above. The first Petition's ten allegations pertain only to wrongs allegedly visited upon third parties. The second Petition's two allegations pertain only to wrongs allegedly visited upon Donohue. In the third Petition, twenty-four allegations, numbers 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, and 23, all pertain to wrongs allegedly visited upon third parties; three allegations, numbers 8, 15, and 24, pertain to wrongs allegedly visited upon Donohue. The fourth Petition's two allegations pertain only to wrongs allegedly visited upon Donohue.

In short, Donohue makes the following seven allegations on her own behalf: the two allegations from her second Petition; allegation numbers 8, 15, and 24 from her third Petition; and the two allegations from her fourth Petition. She seeks relief for these wrongs.

The Amended Petition reiterates all of the allegations contained in the four previously filed Petitions. Donohue sets forth allegations of wrongs visited upon her by the District and she sets forth requests for relief as follows: (1) an explanation for the denial of her request for non-accumulated sick days in December 2014, an apology for

alleged untruthful statements made about her in connection with said request, and the purging from her personnel file of any statements that might malign her character; (2) cash compensation for time spent defending herself from false statements in connection with the denial of her request for non-accumulated sick days and for attending “Back To School Nights” and “Report Card Distribution Nights,” and for time spent on “all of the work I had to complete on a daily, weekly basis, after hours, on weekends, and early in the morning”; (3) an explanation for why her name appears on assessment data, evaluation-type documents, Infinite Campus, and other documents for a time period while she was on medical leave; (4) an explanation for why she was not granted an interview when she applied for an ELA on-site supervisor position; (5) an explanation for why her e-mail to Carole Smelter went unanswered; (6) cash compensation for her personal instructional materials in her classroom which were allegedly destroyed or thrown out over the course of the summer of 2013, and to be informed of the results of an investigation into this incident by Luis Rojos, the director of the Labor Relations Office of the Paterson public schools; and (7) an explanation for why she was denied the use of a microphone at a “You Are Special To Me Tea” event in the 2013–2014 school year, as well as an apology.

The matter (Agency Reference Number 123-4/16) was transmitted to the Office of Administrative Law on June 13, 2016, and filed on June 14, 2016, as a contested case. Another matter (Agency Reference Number 150-5/16) was transmitted to the Office of Administrative Law on June 27, 2016, and filed on June 27, 2016, as a contested case. On June 13, 2016, Robert E. Murray, Esq., filed the respondent’s Answer to the first, third and fourth Petitions, and on July 22, 2016, he filed the respondent’s Answer to the second Petition. The tribunal held an initial conference by telephone on July 13, 2016. The tribunal issued its Pre-Hearing Order on July 15, 2016, and an Amended Pre-Hearing Order on July 27, 2016. The cases were consolidated by the Order of Consolidation dated July 18, 2016.

At present, this case is before the tribunal for the disposition of three motions:

The first motion is a “Motion to Request Additional Documents” was filed by the petitioner on October 20, 2016.

The second motion is a “Motion to Dismiss” was filed by the respondent on October 20, 2016; and

The third motion is a “Discovery Motion” was filed by the petitioner on November 3, 2016.

While the tribunal was reviewing the motions, it came to its attention that, in regard to the service of the petitioner’s August 27, 2016, Amended Complaint (i.e., the Amended Petition) petitioner apparently did not receive the green return receipt card back from the U.S. Postal Service, which would indicate whether or not the respondent has actually received a copy of the Amended Petition. After checking its file and finding no filed Answer to the Amended Petition, the tribunal sent an e-mail to both the petitioner and the respondent on February 27, 2017. In this e-mailed letter the tribunal brought the issue of the service of the Amended Petition to their attention, seeking to find out—one way or the other—if respondent received the Amended Petition. On March 3, 2017, the tribunal received respondent’s faxed correspondence and its Answer to the Amended Petition. The tribunal has accepted the Answer to Amended Petition *nunc pro tunc*, since there are no substantive differences between the allegations contained in the original four petitions and the Amended Petition.

FINDINGS OF FACT

The following facts are not in dispute:

1. Donohue served as a teacher in the Paterson School District for approximately twenty-eight years until she retired on September 1, 2015.
2. The events described by Donohue in her Petitions occurred during the period of time encompassed by her dates of her employment.
3. Donohue’s Petitions were filed with the Bureau of Controversies and Disputes on April 19, 2016 (ten allegations); April 29, 2016 (one allegation); May 23, 2016 (twenty-four allegations); and May 23, 2016 (two allegations).

4. Donohue's Amended Complaint (i.e., Amended Petition) was filed on August 27, 2016.

5. Donohue's Motion to Request Additional Documents, filed on October 20, 2016, asks the Tribunal "to issue an Order requiring Respondent to submit any and all additional documents that the Petitioner requests that are necessary to support the validity of the accusations/violations of regulations."

6. Respondent's (the District's) Motion to Dismiss, filed on November 3, 2016, argues that Donohue lacks standing to bring the Petitions she has filed and also argues that she filed all of same out-of-time.

7. Donohue's "Discovery Motion", filed November 3, 2016, complains that the Respondent did not make "a good faith effort to provide ethical, truthful, complete and certified answers" and impliedly asks the Tribunal to compel same.

8. Although Donohue provided this Tribunal with copies of the Interrogatory Questions that she served on the Respondent, Donohue did not provide this Tribunal with copies of the respondent's answers to the Interrogatories.

9. Various opposition papers and correspondences from the parties were received and reviewed by the Tribunal, including a letter from the Petitioner received December 8, 2016. In this letter, Petitioner enclosed a newspaper article from the (Bergen) Record dated December 3, 2016, entitled "Paterson Schools Fill Lucrative Staff Positions," which petitioner cited in support of her position in the controversy at bar.

ISSUES TO BE DECIDED

The first issue to be decided is whether petitioner Donohue has the requisite standing to bring an action against the District.

The second issue to be decided is whether Donohue filed her petitions in accordance with the time limitations set forth in the regulations.

APPLICABLE LAW

Standing

In New Jersey, the Appellate Division, in the case of LDM v. Princeton Regional Health Commission, 336 N.J. Super. 277 (App. Div. 2000), stated:

Standing is a threshold determination which governs the ability of a party to initiate and maintain a suit before the court. In re Adoption of Baby T., 160 N.J. 332 (1999). Generally, in New Jersey, “[e]ntitlement to sue requires a sufficient stake and real adverseness with respect to the subject matter of the litigation.” New Jersey State Chamber of Commerce v. New Jersey Election Law Enforcement Commission, 82 N.J. 57, 67 (1980) (quoting Crescent Park Tenants Association v. Realty Equities Corp. of N.Y., 58 N.J. 98, 107 (1971)). Additionally, [a] substantial likelihood of some harm visited upon the plaintiff in the event of an unfavorable decision is needed for purposes of standing. Ibid. (quoting Home Builders League of S. Jersey v. Berlin Twp., 81 N.J. 127, 134-35 (1979)).”

[See also New Jersey Citizen Action v. Riviera Motel Corp., 152 N.J. 361 (1998).]

The Chancery Division ruled that litigants, generally, have no standing to assert the rights of third parties. Bank of New York v. Raftogianis, 418 N.J. Super. 323, 451-52 (Ch. Div. 2010).

Time Limits for Filing

N.J.A.C. 6A:3-1.1(a) states:

This chapter sets forth the rules of procedure established by the Department of Education for the filing of petitions with the Commissioner of Education to hear and decide

controversies and disputes arising under school laws in accordance with N.J.S.A. 18A:6-9.

N.J.A.C. 6A:3-1.3(a) states:

To initiate a contested case for the Commissioner's determination of a controversy or dispute arising under the school laws, a petitioner shall prepare a petition of appeal conforming to the requirements of N.J.A.C. 6A:3-1.4 [including a statement of the specific allegations and essential facts as well as the section or sections of the school laws under which the controversy has arisen] and serve such petition upon each respondent, together with any supporting papers the petitioner may include with the petition. The petitioner then shall file proof of service on each respondent . . . and the original petition and supporting materials, if any, with the Commissioner

N.J.A.C. 6A:3-1.3(i) sets forth a ninety-day time limit for the filing of petitions, as follows:

The petitioner shall file a petition no later than the 90th day from the date of receipt of the notice of a final order, ruling or other action by the district board of education, individual party, or agency, which is the subject of the requested contested case hearing.

Case law in New Jersey supports a strict adherence to the ninety-day time limit. In Riley v. Hunterdon Central High Board of Education, 173 N.J. Super. 109 (App. Div. 1980), the petitioner was notified by letter of the nonrenewal of her contract on April 13, 1976. Rather than filing a petition with the Commissioner of Education, she opted to pursue her grievance through an arbitration process. After receiving an unsatisfactory result from arbitration, she decided to pursue an appeal to the Commissioner by filing a petition on June 20, 1977. Her filing was more than a year after she received the notice of nonrenewal. The Commissioner dismissed the petition as untimely. The Appellate Division upheld the Commissioner's dismissal of the petition as untimely.

In Kaprow v. Board of Education of Berkeley Township, 131 N.J. 572 (1993), the Supreme Court affirmed the Appellate Division holding that the Commissioner of

Education had authority from the Legislature to adopt regulations establishing a ninety-day limitation for school personnel to file disputes under school laws; that administrative regulations were presumptively valid; that a ninety-day limitation afforded an aggrieved school employee a meaningful opportunity to file his/her petition; that ninety days was a reasonable procedural requirement; and, that anyone challenging such a regulation bears the burden of proving its invalidity. Kaprow, supra, 131 N.J. at 580-83. The Supreme Court also stated that the reason for a limitation period is twofold: “to stimulate litigants to pursue a right of action within a reasonable time so that the opposing party may have a fair opportunity to defend,” and “to penalize dilatoriness and serve as a measure of repose.” Id. at 587.

It is therefore settled that when an employee has a grievance with his or her employer arising out of the school laws of New Jersey, his/her petition must be filed within ninety days from the date of the employer’s allegedly wrongful act or from the date of the notice of the employer’s adverse action.

LEGAL ANALYSIS AND CONCLUSIONS

The threshold question is whether Donohue has standing to bring the allegations contained in her petitions.

In all of her petitions, Donohue alleges that there is ongoing nepotism and favoritism whereby certain employees are not required by their superiors to perform the duties associated with their positions, particularly the instruction of schoolchildren.

Moreover, Donohue alleges that the school’s administrative staff fails to perform its duties in regard to properly supervising and evaluating the performance of teachers and other school personnel. Donohue alleges that the school district’s financial resources have been wasted because unqualified people have been hired, and that undeserving people have been given promotions. Throughout her petitions Donohue has stated that her complaints are primarily motivated by her belief that the schoolchildren have not received the thorough and efficient education they deserve

because of the school administration's squandering of resources and failure to adequately supervise the performance of those responsible to instruct the children.

All of the aforementioned allegations, however sincerely motivated, assert the rights of third parties rather than Donohue herself. However appalled Donohue may feel because of her belief that the children are being shortchanged, it is the children who are the aggrieved parties rather than Donohue. Donohue's allegations of the District's failure to properly teach the children do not demonstrate that she has suffered or is in imminent danger of suffering some harm in the event of an adverse outcome in court. As noted above, in order to have standing Donohue would have to demonstrate that she has a sufficient stake in the subject matter. She has failed to do so. Moreover, as noted above, Donohue cannot gain standing in this case by asserting the rights of third parties. I **CONCLUDE** that Donohue has no standing to bring any allegations that only assert the rights of others and that do not address allegations of wrongs visited upon her by the District.

We now turn to Donohue's allegations of wrongs visited upon her by the District. Donohue has asserted that she was unfairly denied use of unaccumulated sick days in December 2014 and that the executive director of labor relations, Louis Rojas, made incorrect and maligning statements about her. These are the types of allegations that Donohue would have standing to bring. Furthermore, Donohue alleged that classroom materials and decorations that she purchased and placed in her classroom were destroyed or disposed of in 2013 and/or 2014. Again, without commenting on the veracity of these allegations, these are things that Donohue would have standing to allege in a petition. Donohue alleges that an administrator wrongfully denied her the use of a microphone at a "You Are Special To Me Tea" event. This too is an allegation that Donohue would have standing to allege in a petition. Donohue alleges that her name appears on assessments, evaluations, and other types of documents composed during a period when she was out on medical leave. This is an allegation that Donohue would have standing to allege in a petition. Donohue alleges that she was unfairly denied cash compensation for her attendance at Back-To-School Nights and various other after-school activities and/or events. This is an allegation that Donohue would have standing to allege in a petition. Donohue alleges that she was unfairly denied an

interview for the position of ELA on-site supervisor. This is an allegation that Donohue would have standing to allege in a petition. I **CONCLUDE** that all of the above-mentioned wrongs that Donohue alleges were visited upon her by the District are things for which she would have standing to petition the Commissioner and/or the tribunal for relief.

Regarding the timeliness of Donohue's petitions, as noted above, N.J.A.C. 6A:3-1.3(i) states that a petitioner has ninety days from the date of a notice of a final order, the date of a ruling, or the date of some other action by the district to file her petition. A review of all of the facts contained in Donohue's allegations in all of her petitions shows that all of the wrongs allegedly visited upon her by the District occurred at times during her employment. She retired on September 1, 2015. Therefore, all of the wrongs allegedly visited upon Donohue by the District were more than ninety days before the filing of any of her petitions. That is to say, Donohue failed to file a petition alleging a wrong visited upon her by the District—a final order, a ruling, or an action—within ninety days of its occurrence. For this reason, I **CONCLUDE** that all of Donohue's petitions have been filed in an untimely manner. I further **CONCLUDE** that all of Donohue's petitions must be and hereby are dismissed for failing to comply with N.J.A.C. 6A:3-1.3(i).

ORDER

Based upon the foregoing, I hereby **ORDER** that the motion to dismiss filed by the respondent is hereby **GRANTED**, and all petitions of the petitioner are hereby **DISMISSED**.

The petitions of the petitioner, having been dismissed as untimely filed, I hereby **ORDER** that petitioner's motion to request additional documents is **DENIED**; and I hereby **ORDER** that petitioner's discovery motion is **DENIED**.

I hereby **FILE** this Initial Decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, P.O. Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

April 6, 2017



DATE

JOHN P. SCOLLO, ALJ

Date Received at Agency:

Date Mailed to Parties:

db